

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-05 NSAE-00 RSC-01 FAA-00 SS-15 NSC-05 L-02

H-01 /051 W

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R 181739Z DEC 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 6891

INFO AMCONSUL MUNICH

AMCONSUL FRANKFURT

AMCONSUL BREMEN

AMCONSUL STUTTGART

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E. O. 11652: N/A

TAGS: EAIR, GW

SUBJECT: CIVAIR - SEABOARD TRUCKING PROBLEM AT MUNICH
AIRPORT

REF: (A) BONN 18315; (B) 276355

1. SEABOARD REPS AT LONDON AND FRANKFURT HAVE CONTACTED THE EMBASSY WITHIN LAST FEW DAYS TO PROVIDE THE FOLLOWING SUMMARY ON THE CURRENT STATUS OF THE CARRIER'S MUNICH AIRPORT TRUCKING PROBLEM. IN ORDER TO MAINTAIN ITS TRUCKING ACTIVITIES PENDING ITS APPEAL OF THE MUNICH COURT ORDER OF OCTOBER 21, SEABOARD NEGOTIATED A NEW ARRANGEMENT FOR CARGO TRUCKED OUT OF MUNICH AIRPORT WHICH PROVIDED FOR A REDUCTION IN PAYMENT TO THE MUNICH AIRPORT COMPANY FROM DM 0.09 PER KILO TO DM 0.05 PER KILO. THIS ARRANGEMENT CONCLUDED NOVEMBER 26, RUNS UNTIL A RULING BY THE BAVARIAN COURT OF APPEALS IS HANDED DOWN. SEABOARD'S LAWYER WILL MAKE AN ORAL PRESENTATION BEFORE THE APPEALS COURT ON DECEMBER 27 AND EXPECTS A DECISION BY MAY 1975.

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2. AS REPORTED IN BONN TEL 18315, SAS THROUGH A COURT INJUNCTION STOPPED (A) THE AIRPORT COMPANY FROM CHECKING ITS CARGO TRUCKS AT MUNICH AIRPORT; (B) THE AIRPORT COMPANY'S ATTEMPTS TO AMEND THE RENTAL CONTRACT TO INCLUDE PROVISION OF A CLAUSE PROVIDING FOR PAYMENT OF A FEE FOR TRUCKING. SABENA, ALITALIA AND KLM SUBSEQUENTLY FILED FOR SIMILAR INJUNCTIONS FOLLOWING APPROACHES FROM THE MUNICH AIRPORT COMPANY REGARDING THEIR RENTAL CONTRACTS. IN A HEARING BEFORE A MUNICH MUNICIPAL COURT ON DECEMBER 5, THE AIRPORT COMPANY AGREED NOT TO INTERFERE WITH THE TRUCKING OF OTHER CARRIERS PENDING THE OUTCOME OF THE SEABOARD CASE.

3. SEABOARD IS, THEREFORE, THE ONLY CARRIER PRESENTLY PAYING A FEE ON CARGO TRUCKED FROM THE MUNICH AIRPORT. FROM CONVERSATIONS WITH SEABOARD REPS HERE, HOWEVER, THE EMBASSY HAS GAINED THE IMPRESSION THAT SOME SEABOARD EXECUTIVES AND LEGAL ADVISERS MAY FAVOR CONTINUING THE PRESENT ARRANGEMENT, AT LEAST UNTIL THE FIRST PHASE OF THE APPEALS PROCEDURE IS CONCLUDED.

4. COMMENT: QUITE APART FROM THE LEGAL MERITS OF THE MUNICH AIRPORT COMPANY'S ACTION, WE BELIEVE THAT THE FACTS OF THE SITUATION WOULD SUPPORT AN ARGUMENT THAT SEABOARD IS BEING SUBJECTED TO DISCRIMINATORY TREATMENT, VIS-A-VIS OTHER CARRIERS OPERATING FROM MUNICH. ASSUMING SEABOARD HAD NO OBJECTIONS, WE WOULD RECOMMEND AN APPROACH TO THE FONOFF AT AN APPROPRIATE LEVEL TOGETHER WITH A PARALLEL INITIATIVE WITH THE TRANSPORT MINISTRY. IN THIS CONNECTION, WE BELIEVE IT MAY BE PERTINENT TO POINT OUT TO THE FRG THE REQUIREMENT THAT SEABOARD PAY A FEE FOR TRUCKING IN MUNICH IS COUNTER TO ARTICLE 11 PARAGRAPH 3 OF THE US/FRG FCN TREATY AS WELL AS THE "FAIR AND EQUAL OPPORTUNITY PROVISION" OF THE BILATERAL. ACTION REQUESTED: WE WOULD APPRECIATE THE DEPARTMENT'S CHECKING WITH SEABOARD/US TO DETERMINE IF THE CARRIER FAVORS EMBASSY INTERVENTION AT THIS POINT. DEPARTMENT'S VIEWS ON AN EMBASSY INITIATIVE WITH THE FRG WOULD ALSO BE APPRECIATED.

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